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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92046383
Party	Defendant Megasol Cosmetic GmbH Megasol Cosmetic GmbH Jean-Monnet-Strasse 6 , DE 54343
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Submission	Answer
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Date	12/07/2006
Attachments	DT-7362 answer.pdf (9 pages)(607643 bytes)

DT-7362

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

ROLAND REIS d/b/a)	
R&C INTERNATIONAL COSMETICS,)	
f/k/a R&K INTERNATIONAL)	
COSMETICS)	
)	Cancellation No. 92046383
Petitioner,)	
)	Mark: EROZONE
v.)	
)	Registration No.: 3,071,704
MEGASOL COSMETIC GMBH)	
)	Registration Date: March 21, 2006
Registrant.)	
_____)	

ANSWER

Registrant, by its attorneys, hereby answers the Notice of Cancellation as follows:

1. Answering paragraph 1 of the Notice of Cancellation, Registrant denies knowledge or information sufficient to form a belief as to the truth of the allegations therein,
2. Answering paragraph 2 of the Notice of Cancellation, Registrant admits that it is a Germany company and that its principal place of business is in Foehren, Germany. Answering the remaining allegations in paragraph 2 of the Notice of

Cancellation, Registrant denies knowledge or information sufficient to form a belief as to the truth of the allegations.

3. Answering paragraph 3 of the Notice of Cancellation, Registrant admits that Petitioner was granted a German trademark registration for the mark E EROZONE THE FINEST FOR YOUR BODY & Design under Registration No. 39921460 and denies the remaining allegations therein.
4. Answering paragraph 4 of the Notice of Cancellation, Registrant denies the allegations therein.
5. Answering paragraph 5 of the Notice of Cancellation, Registrant denies the allegations therein.
6. Answering paragraph 6 of the Notice of Cancellation, Registrant denies the allegations therein.
7. Answering paragraph 7 of the Notice of Cancellation, Registrant denies the allegations therein.
8. Answering paragraph 8 of the Notice of Cancellation, Registrant denies the allegations therein.
9. Answering paragraph 9 of the Notice of Cancellation, Registrant admits that it filed two trademark applications on March 13, 2003 but denies the remaining allegations therein.

10. Answering paragraph 10 of the Notice of Cancellation, Registrant denies the allegations therein.
11. Answering paragraph 11 of the Notice of Cancellation, Registrant denies the allegations therein.
12. Answering paragraph 12 of the Notice of Cancellation, Registrant states that the record speaks for itself.
13. Answering paragraph 13 of the Notice of Cancellation, Registrant states that the record speaks for itself and points out that Petitioner filed its application Serial No. 76/581,550 for the mark E EROZONE THE FINEST FOR YOUR BODY & Design on March 15, 2004 and not March 15, 2003. Therefore, Petitioner filed its application one year and two days and not two days after Registrant filed its application for EROZONE.
14. Answering paragraph 14 of the Notice of Cancellation, Registrant states that the record speaks for itself.
15. Answering paragraph 15 of the Notice of Cancellation, Registrant states that the record speaks for itself with respect to the alleged proceedings and denies the remainder of the allegations.
16. Answering paragraph 16 of the Notice of Cancellation, Registrant states that the record speaks for itself with respect to the copy attached to the Notice of

Opposition and denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations therein.

17. Answering paragraph 17 of the Notice of Cancellation, Registrant denies the allegations therein.
18. Answering paragraph 18 of the Notice of Cancellation, Registrant states that the record speaks for itself.
19. Answering paragraph 19 of the Notice of Cancellation, Registrant states that the record speaks for itself.
20. Answering paragraph 20 of the Notice of Cancellation, Registrant states that the record speaks for itself.
21. Answering paragraph 21 of the Notice of Cancellation, Registrant states that the record speaks for itself.
22. Answering paragraph 21 of the Notice of Cancellation, Registrant states that the record speaks for itself.
23. Answering paragraph 23 of the Notice of Cancellation, Registrant states that the record speaks for itself.
24. Answering paragraph 24 of the Notice of Cancellation, Registrant denies the allegations therein.

25. Answering paragraph 25 of the Notice of Cancellation, Registrant states that the record speaks for itself.
26. Answering paragraph 26 of the Notice of Cancellation, Registrant states that the record speaks for itself.
27. Answering paragraph 27 of the Notice of Cancellation, Registrant denies the allegations therein.
28. Answering paragraph 28 of the Notice of Cancellation, Registrant states that the record speaks for itself and again notes that Petitioner's filing date is one year and two days later than Registrant's filing date.
29. Answering paragraph 29 of the Notice of Cancellation, Registrant states that the record speaks for itself.
30. Answering paragraph 30 of the Notice of Cancellation, Registrant states that the record speaks for itself.
31. Answering paragraph 31 of the Notice of Cancellation, Registrant states that the record speaks for itself.
32. Answering paragraph 32 of the Notice of Cancellation, Registrant denies the allegations therein.
33. Answering paragraph 33 of the Notice of Cancellation, Registrant denies the allegations therein.

34. Answering paragraph 34 of the Notice of Cancellation, Registrant denies the allegations therein.
35. Answering paragraph 35 of the Notice of Cancellation, Registrant denies the allegations therein.
36. Answering paragraph 36 of the Notice of Cancellation, Registrant denies the allegations therein.
37. Answering paragraph 37 of the Notice of Cancellation, Registrant denies the allegations therein.
38. Answering paragraph 38 of the Notice of Cancellation, Registrant denies the allegations therein.
39. Answering paragraph 39 of the Notice of Cancellation, Registrant denies the allegations therein.
40. Answering paragraph 40 of the Notice of Cancellation, Registrant denies the allegations therein.
41. Answering paragraph 41 of the Notice of Cancellation, Registrant denies the allegations therein.
42. Answering paragraph 42 of the Notice of Cancellation, Registrant denies the allegations therein.

43. Answering paragraph 43 of the Notice of Cancellation, Registrant denies the allegations therein.
44. Answering paragraph 44 of the Notice of Cancellation, Registrant denies the allegations therein.
45. Answering paragraph 45 of the Notice of Cancellation, Registrant admits that Petitioner's mark is confusingly similar to Registrant's mark.
46. Answering paragraph 46 of the Notice of Cancellation, Registrant denies the allegations therein. Petitioner, in paragraph 4, states that it started using the mark in United States commerce on November 23, 2004. Registrant's filing date is March 13, 2003.
47. Answering paragraph 47 of the Notice of Cancellation, Registrant admits that the goods listed in Petitioner's application are identical and/or substantially similar to the goods listed in Registrant's registration.

Affirmative Defenses

1. The Petitioner has not alleged a cause of action upon which to grant cancellation of the subject registration.

2. Petitioner allegedly started using its mark on November 23, 2004, which is about 20 months after Registrant's filing date and, to this date, has not filed an Amendment to Allege Use for its intent to use application.

3. The Petition should be denied based on laches. Petitioner has had knowledge of Registrant's constructive use of the mark since September 27, 2004, the date when it received the First Office Action from the United States Trademark Office for its pending Application Serial No. 76/581,550, for the mark W EROZONE THE FINEST FOR YOUR BODY, informing Petitioner of Registrant's earlier filing date. Petitioner has inexcusably delayed its objections to Respondent's registration for an undue period of time. Although Petitioner had knowledge of Registrant's application, it failed to file an opposition or an extension request for filing an opposition during the publication period from August 10, 2004 to September 9, 2004. Registrant defended its application against another party's opposition, and the opposition was dismissed on March 14, 2005. Not until the filing of the Notice of Cancellation has Petitioner informed Registrant of its objections, which delay has resulted in prejudice to Registrant.

4. The Petition should be denied based on equitable estoppel. Petitioner misleadingly failed to file an opposition and Registrant thus believed that there were no objections and therefore relied on the absence of objections. As such, after having defended its mark against another party's opposition, Registrant would be materially prejudiced.


WHEREFORE, Registrant prays that this Cancellation be dismissed with prejudice.

Respectfully submitted,

MEGASOL COSMETIC GMBH

Dated: December 7, 2006

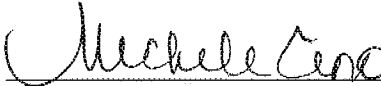
By: _____


Katrin Lewertoff
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Certificate of Service

The undersigned hereby certifies that a true and correct copy of the foregoing was served this 7th day of December 2006 on counsel for Petitioner by Express Mail, postage prepaid, addressed as follows:

Toby M.J. Butterfield
Matthew A. Kaplan
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Michele Cino